

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 341 OF 2007
IN
CRIMINAL WRIT PETITION No. 310 OF 2007

Balaji Nama Mhatre & Ors.

Applicants

Vs.

M/s. Parsampuria Plantation
Ltd. and Ors.

Respondents

Sri Milind Sathe, Sr. counsel with Mr. Aliabbas
Delhiwala i/b M/s. Madekar & Co. for the applicants.

Sri Rishi Bhuta, Advocate for respondent No.1.

Smt. U. V. Kejariwal, APP for the respondent Nos.
2 & 3.

CORAM : SRI R.M.S. KHANDEPARKAR &
SRI A.A. SAYED, JJ.

DATE : DECEMBER 11, 2007.

P.C.

. Heard the learned counsel for the
applicants. Sri. Rishi Bhuta, learned advocate
appearing for the respondent No.1 states that he has no
instructions in the matter though he has placed on
record affidavit in reply. Considering the facts
disclosed from record, it is apparent that though the
agreement for sale between the parties was executed in

the year 1994, the entire consideration amount has not been paid by the respondent No.1 till this day. Out of the total consideration of Rs.2,21,025/- agreed upon, only sum of Rs. 35,256/- by cheque and further amount of Rs. 20,000/- in cash, aggregating to Rs. 55,256/- was paid. The record nowhere discloses that any step having been taken by the proposed purchaser for completion of the terms of the agreement and payment of the entire consideration amount. In the circumstances, we do not find that respondent was justified in submitting that the property could be subjected to attachment in the proceedings and the rights of the lawful owner in respect of the property can be jeopardised or curtailed in any manner. It has been sought to be contended by the respondent in the affidavit that possession of the property was taken over on execution of the agreement and on payment of the earnest money. The fact remains that the record of right discloses the possession of the property to have continued with the applicant and further no steps were ever taken by the proposed purchaser to complete the obligations under the agreement till this date.

2. The learned advocate appearing for the respondent No.1 also fairly submitted that the respondent No.1 has no objection for grant of relief

asked in terms of prayer (a), if the applicant deposits the amount which was already paid in terms of the agreement.

3. In the circumstances, prima-facie case being made out, the application filed by the applicant is well deserved to be allowed as prayed for. Denial of the relief in that regard is bound to result in irreparable loss to the applicant. Considering the fact that there is an admission on the part of the respondent that only amount of Rs. 55,256/- was paid and rest of the amount has not been paid till date as per the terms of the agreement, balance of convenience lies in favour of the applicant, hence, application is allowed in terms of prayer Clause (a), and stands disposed of accordingly.

4. The amount in terms of the order shall be deposited in this Court.

Sd/-
[R.M.S. KHANDEPARKAR, J.]

Sd/-
[A. A. SAYED, J.]